

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Volha Shauchenka	Team: Squad #8	CCRB Case #: 201802977	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 04/14/2018 3:30 AM	Location of Incident: In front of 347 Broadway	Precinct: 90	18 Mo. SOL 10/14/2019	EO SOL 10/14/2019	
Date/Time CV Reported Mon, 04/16/2018 5:10 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 04/16/2018 5:10 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Omar Birchwood	00000	945512	090 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Nicole Piridis	16734	957960	090 PCT
2. POM Nicholas Toscano	21842	945332	090 PCT
3. POM Michael Galindez	27659	945744	090 PCT
4. POM Kenneth Dubois	22902	962372	090 PCT
5. POM Nelson Escobar	12460	943209	090 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Omar Birchwood	Discourtesy: in front of 349 Broadway, in Brooklyn, Lieutenant Omar Birchwood spoke discourteously to § 87(2)(b)	
B.LT Omar Birchwood	Force: In front of 349 Broadway, in Brooklyn, Lieutenant Omar Birchwood used physical force against § 87(2)(b)	
C.LT Omar Birchwood	Discourtesy: By the patrol car, Lieutenant Omar Birchwood spoke discourteously to § 87(2)(b) and § 87(2)(b)	
D.LT Omar Birchwood	Discourtesy: In the patrol car, Lieutenant Omar Birchwood spoke discourteously to § 87(2)(b)	

Case Summary

On April 16, 2018, § 87(2)(b) called the CCRB and filed this complaint via the CCRB's call processing system on behalf of herself and her friend § 87(2)(b).

On April 14, 2018, at approximately 3:30 a.m., § 87(2)(b) and § 87(2)(b) exited Zamaan Bar and Restaurant, located at 349 Broadway in Brooklyn. While standing by the bar door, § 87(2)(b) engaged in an argument with another bar patron. Lt. Omar Birchwood, PO Nicole Piridis, PO Nelson Escobar and other officers of the 90th Precinct responded to the scene and arrested § 87(2)(b). Lt. Birchwood told § 87(2)(b) "Get the fuck out of here," and pushed her (Allegation A: Discourtesy, § 87(2)(g) Allegation B: Force, § 87(2)(g)). In addition, Lt. Birchwood told § 87(2)(b) "Go the fuck home," (Allegation A continued). Lt. Birchwood also told § 87(2)(b) and § 87(2)(b) "Get in the fucking car," (Allegation C: Discourtesy, § 87(2)(g)). While en route to the 90th Precinct stationhouse, Lt. Birchwood said, "Some G-Shit," to § 87(2)(b) (Allegation D: Discourtesy, § 87(2)(g)).

Body-worn camera (BWC) footage from the incident was obtained from PO Piridis, PO Nicholas Toscano, PO Michael Galindez, and PO Kenneth Dubois, all of the same command, and attached in IAs # 24-28 (Board Reviews # 01, 03, 05). The video summaries are attached in IAs # 35-39 (Board Reviews # 02, 04, 06). No other video footage was found for this incident. Relevant portions of the videos have been included below (Board Review # 16-18).

Findings and Recommendations

Allegation (A) Discourtesy: in front of 349 Broadway, in Brooklyn, Lieutenant Omar Birchwood spoke discourteously to § 87(2)(b)

It is undisputed that Lt. Birchwood spoke discourtesy to § 87(2)(b).

During § 87(2)(b)'s CCRB interview (Board Review # 08), she stated that she approached Lt. Birchwood within a foot to inquire about § 87(2)(b) once § 87(2)(b) was placed under arrest, and Lt. Birchwood said, "Get the fuck back." § 87(2)(b) denied interfering with § 87(2)(b)'s arrest in any manner.

§ 87(2)(b) did not cooperate with this investigation. § 87(2)(b) missed one appointment and never returned calls from the CCRB (Board Review #7).

In Lt. Birchwood's statement to the CCRB (Board Review # 09), he testified that while he and his operator, PO Piridis, were standing by Zamaan Bar and Restaurant, he observed § 87(2)(b) jump over the bar bouncer and attempt to hit another bar patron. PO Piridis approached § 87(2)(b) and pulled her away from the bouncer, after which § 87(2)(b) pulled PO Piridis off § 87(2)(b). Lt. Birchwood approached § 87(2)(b) and ordered her not to interfere. Lt. Birchwood stated he did not recall using profanity toward § 87(2)(b) and did not recall hearing any officer do so.



2018-09-25_10-26-54 force and discourtesy..mp4

(Board Review # 16)

During his interview, Lt. Birchwood was shown BWC footage taken by PO Piridis attached to IA # 24. At 0:13, a scuffle is seen by entrance to the bar. At 0:40, the video frame shows the body of a uniformed officer who is wearing a white shirt. Lt. Birchwood identified himself as the officer in the white shirt. At 0:29, the scuffle continues and a lot of movement is seen in front of the camera. At 0:35, a male says, "Get the fuck out of here. Let's go," and Lt. Birchwood pushes § 87(2)(b) who falls to the ground. She stands up and approaches Lt. Birchwood at 0:38 along with another female. Lt. Birchwood pushes § 87(2)(b) away and multiple male voices are heard saying, "Leave, now," and, "Go home," several times. At 0:43, § 87(2)(b) pushes herself towards Lt. Birchwood, and 0:44, he pushes her away and a voice is heard yelling, "Go the fuck home." A crowd of screaming people is seen in the vicinity. Lt. Birchwood did not recognize the voice of the person and did not recall if he made those statements.

PO Piridis' statement to the CCRB was generally consistent with that of Lt. Birchwood (Board Review # 10). She added that a crowd of approximately 40 people was present at the location. They were loud but did not physically interfere. PO Piridis stated that she reviewed her own BWC footage after the incident, and then heard Lt. Birchwood use profanity.

§ 87(2)(b)'s arrest report #§ 87(2)(b) notes that § 87(2)(b) refused to disperse, grabbed and pushed police officers (Board Review #22)

NYPD Patrol Guide Procedure 203-09 states that officers must be courteous and respectful when interacting with members of the public (Board Review # 12). Officers may use limited profanity towards civilians to gain control of a dynamic situation. Police Department v. Pichardo, DAO-DCT Case #2015-15012 (Board Review # 13). Unacceptable under normal circumstances, profanity may be excused in the course of a violent confrontation. Police Department v. St. Clair, DAO-DCT Case #2017-17276 (Board Review #20).

§ 87(2)(g)

Allegation (B) Force: In front of 349 Broadway, in Brooklyn, Lieutenant Omar Birchwood used physical force against § 87(2)(b)

It is undisputed that Lt. Birchwood arrested § 87(2)(b) after she and § 87(2)(b) argued with another bar patron. It is also undisputed that Lt. Birchwood used force towards § 87(2)(b).

During § 87(2)(b)'s CCRB interview (Board Review # 08), she stated that she approached Lt. Birchwood to inquire about § 87(2)(b) and stood within one foot of him. After telling her, "Get the fuck back," Lt. Birchwood pushed her away by placing his hands on her chest. § 87(2)(b) fell, stood up, and pushed Lt. Birchwood in the chest. Lt. Birchwood again pushed § 87(2)(b) back causing her to fall flat on her back. § 87(2)(b) stood up and Lt. Birchwood placed her in handcuffs. § 87(2)(b) visited § 87(2)(b) Hospital Center in regards to this incident.

According to § 87(2)(b)'s medical records from § 87(2)(b) Hospital Center from § 87(2)(b), she was admitted to the emergency department with a complaint of back pain (Privileged Documents #01). The records document that § 87(2)(b) was involved in a physical altercation with police, during which she was pushed twice and fell on her tail bone. An X-ray of § 87(2)(b)'s back was performed but did not reveal any fractures or dislocations. § 87(2)(b) was discharged the same day and diagnosed with a tailbone injury.

Lt. Birchwood testified that once he observed § 87(2)(b) pulling PO Piridis off § 87(2)(b) (Board Review # 09), he approached § 87(2)(b) ordered her not to do that, and pushed her away by placing his hands on her arm. § 87(2)(b) moved two steps back. § 87(2)(b) again tried to pull PO Piridis off § 87(2)(b). Lt. Birchwood pushed § 87(2)(b) again by placing his hands on her arms. § 87(2)(b) tripped and fell to the ground and landed on her backside. Lt. Birchwood used force because § 87(2)(b) was interfering with PO Piridis's effort to arrest § 87(2)(b). § 87(2)(b) stood back up and swung at Lt. Birchwood, hit him in the chest, and broke his tie clasp. Lt. Birchwood placed § 87(2)(b) under arrest. Lt. Birchwood's account is consistent with the threat, resistance, and injury (TRI) report he completed for § 87(2)(b) (Board Review #19).

PO Piridis' testimony regarding the beginning of her interaction with § 87(2)(b) and § 87(2)(b) was consistent with that of Lt. Birchwood (Board Review # 10). PO Piridis walked toward § 87(2)(b) and § 87(2)(b) grabbed § 87(2)(b) and pulled her away from the bouncer. PO Piridis tried to calm § 87(2)(b) down, and asked her to go home. § 87(2)(b) grabbed on to PO Piridis's right jacket sleeve. Lt. Birchwood stepped in and informed § 87(2)(b) that she could not interfere, and she should go home. Lt. Birchwood repeatedly ordered § 87(2)(b) and § 87(2)(b) to go home. Both § 87(2)(b) and § 87(2)(b) approached and attempted to grab Lt. Birchwood's shirt collar, and § 87(2)(b) pulled Lt. Birchwood's tie off his shirt. PO Piridis pulled § 87(2)(b) away from Lt. Birchwood but she resisted and kept moving. PO Piridis repeatedly ordered her to stop moving. PO Piridis and PO Escobar handcuffed § 87(2)(b) and placed her under arrest. PO Piridis's account was consistent with the TRI report she prepared for § 87(2)(b) (Board Review # 19). Furthermore, the TRI report prepared by PO Escobar confirms that § 87(2)(b) resisted arrest (Board Review # 19).

PO Piridis reviewed her own BWC footage after the incident, and saw Lt. Birchwood push § 87(2)(b) away from him by placing his arms on her shoulders.



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(Board Review # 16)

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§ 87(2)(g)

Although § 87(2)(b) did not make this allegation, it was captured by the BWC recording.

(Board Review # 17)

NYPD Patrol Guide Procedure 203-09 states that officers must be courteous and respectful when interacting with members of the public (Board Review # 12). Officers may use limited profanity towards civilians to gain control of a dynamic situation. Police Department v. Pichardo, DAO-DCT Case #2015-15012 (Board Review # 13). Officers may not use profanity to belittle or insult civilians.

§ 87(2)(g)

Allegation (D) Discourtesy: In the patrol car, Lieutenant Birchwood spoke discourteously to

§ 87(2)(b)

Although § 87(2)(b) did not make this allegation, it was captured by the BWC recording.

During his CCRB interview, Lt. Birchwood was shown another BWC video taken by PO Piridis (Board Review # 19). The BWC video is attached to IA # 28. At the 1:00 minute mark, a male voice can be heard saying, “Some G-shit,” to § 87(2)(b) who was in the backseat of the patrol car. Lt. Birchwood stated that it had to be his voice because PO Piridis was his operator that night, and the voice sounded like his. Lt. Birchwood explained that he made this comment in response to whatever § 87(2)(b) had said. Lt. Birchwood did not recall what § 87(2)(b) had said. The BWC footage shows that § 87(2)(b) was talking to Lt. Birchwood and said, “Where are we going?” and, “What did I do wrong?” before Lt. Birchwood responded with the phrase, “Some G-shit.”



2018-10-18_14-26-08 Discourtesy 2.mp4

(Board Review # 18)

NYPD Patrol Guide Procedure 203-09 states that officers must be courteous and respectful when interacting with members of the public (Board Review # 12). Officers may use limited profanity towards civilians to gain control of a dynamic situation. Officers may not use profanity to belittle or insult civilians. Police Department v. Pichardo, DAO-DCT Case #2015-15012 (Board Review # 12).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties (Board Review #21).
- Lt. Birchwood has been a member of service for 10 years and has been subject in nine complaints and 24 allegations, of which one was substantiated.

- 201700136 involved a substantiated entry and search of a premise allegation against Lt. Birchwood. The Board recommended Charges and the NYPD has not yet imposed discipline.
- 201017030 involved allegations of physical force and discourtesy against Lt. Birchwood that were closed as complaint withdrawn.
- 201302056 involved use of a nightstick and physical force allegations that were closed as substantiated and exonerated, respectively.
- § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of October 1, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (Board Review # 14).

- § 87(2)(c), § 87(2)(b) [REDACTED]
- § 87(2)(c), § 87(2)(b) [REDACTED]

Squad No.: 8

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
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Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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